

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MICHAEL J. LOVELESS,

Plaintiff,

v.

PAROLE AUTHORITIES OF THE
CALIFORNIA BOARD OF PAROLE
HEARINGS,

Defendant.

No. 2:21-CV-0430-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court is Plaintiff's complaint, ECF No. 1.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a "... short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the

1 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
2 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege
3 with at least some degree of particularity overt acts by specific defendants which support the
4 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
5 impossible for the Court to conduct the screening required by law when the allegations are vague
6 and conclusory.

8 I. PLAINTIFF'S ALLEGATIONS

9 Plaintiff states that he was arrested in Texas by the "Calif. parole authorities" on
10 an "interstate parole transfer." ECF No. 1, pg. 2. Plaintiff admits to violating the terms of his
11 California parole while in Texas, suffering two convictions in Texas for driving under the
12 influence. See id. Plaintiff states that he served jail time for these offenses. See id. at 2-3.
13 Plaintiff states that his California parole was revoked and that he was returned to state prison in
14 California to serve the remainder of his California sentence. See id. at 3. Plaintiff claims his
15 California parole revocation and return to prison amounts to disproportionate punishment given
16 that he served time in Texas for the crimes committed there. See id.

18 II. DISCUSSION

19 Plaintiff's claim, as currently pleaded, is not cognizable because success on the
20 merits would necessarily imply the invalidity of his continued incarceration in California for
21 violating the terms of his parole.

22 When a state prisoner challenges the legality of his custody and the relief he seeks
23 is a determination that he is entitled to an earlier or immediate release, such a challenge is not
24 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ
25 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,
26 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.
27 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief
28 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's

1 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in
2 imposition of a sanction affecting the overall length of confinement, such a claim is not
3 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal, by
4 habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-
5 84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to
6 malicious prosecution action which includes as an element a finding that the criminal proceeding
7 was concluded in plaintiff's favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997)
8 (concluding that § 1983 claim not cognizable because allegations of procedural defects were an
9 attempt to challenge substantive result in parole hearing); cf. Neal, 131 F.3d at 824 (concluding
10 that § 1983 claim was cognizable because challenge was to conditions for parole eligibility and
11 not to any particular parole determination); cf. Wilkinson v. Dotson, 544 U.S. 74 (2005)
12 (concluding that § 1983 action seeking changes in procedures for determining when an inmate is
13 eligible for parole consideration not barred because changed procedures would hasten future
14 parole consideration and not affect any earlier parole determination under the prior procedures).

15 Here, Plaintiff does not challenge the conditions of his eligibility for parole. Nor
16 does he seek prospective changes in parole procedures. Rather, he claims that he should not be
17 incarcerated at all on a California parole violation. Success on the merits of this claim would
18 necessarily mean that his continued incarceration in California is invalid. Plaintiff has not alleged
19 that the parole revocation has been set aside or overturned. In an abundance of caution, the Court
20 will permit Plaintiff an opportunity to amend to further clarify and explain his claim in light of the
21 foregoing principles.

22 23 **III. CONCLUSION**

24 Because it is possible that the deficiencies identified in this order may be cured by
25 amending the complaint to state a claim for habeas corpus relief, Plaintiff is entitled to leave to
26 amend prior to dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131
27 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an amended complaint
28 supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

1 Thus, following dismissal with leave to amend, all claims alleged in the original complaint which
2 are not alleged in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th
3 Cir. 1987). Therefore, if Plaintiff amends the complaint, the Court cannot refer to the prior
4 pleading in order to make Plaintiff's amended complaint complete. See Local Rule 220. An
5 amended complaint must be complete in itself without reference to any prior pleading. See id.

6 If Plaintiff chooses to amend the complaint, Plaintiff not only amend the claim to
7 a habeas corpus action, but must also demonstrate how the conditions complained of have
8 resulted in a deprivation of Plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d 227
9 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is
10 involved, and must set forth some affirmative link or connection between each defendant's
11 actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
12 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

13 Finally, Plaintiff is warned that failure to file an amended complaint within the
14 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
15 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
16 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
17 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's complaint is dismissed with leave to amend; and
20 2. Plaintiff shall file a first amended complaint within 30 days of the date of
21 service of this order.

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23 Dated: August 4, 2021



24 DENNIS M. COTA
25 UNITED STATES MAGISTRATE JUDGE
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